

**BEFORE THE
PHYSICAL THERAPY BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)
Against:)
)
DON FADRI FERROLINO)
)
)
)
_____)

Case #: 1D 2001 62804

OAH No.: L2003120291

The foregoing Proposed Decision, in case number 1D 2002 62974, is hereby adopted by the Physical Therapy Board, Department of Consumer Affairs, State of California.

This decision shall become effective on the 18th day of October, 2005.

It is so ordered this September 17, 2004 .

Original Signed By:
Donald A. Chu, P.T., President
Physical Therapy Board
of California

BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. 1D-2001-62804
DON FADRI FERROLINO,	OAH No. L2003120291
Respondent.	

PROPOSED DECISION

On July 29, 2004, Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, heard this matter in Los Angeles, California.

Aleksandra C. Sachowicz, Deputy Attorney General, represented complainant, the Executive Officer of the Physical Therapy Board of California (hereinafter the board).

Don Fadri Ferrolino (hereinafter respondent) represented himself.

During the hearing complainant moved to strike portions of the Accusation, as follows: Page 4, lines 3 through 6 (as to patient A.C.); Page 4, lines 12 through 14 (patient P.P.); Page 4, lines 15 through 17 (patient R.S.); Page 5, lines 17 through 19 (patient D.W.). The motion was granted, and the Accusation was amended by interlineation. (See Exhibit 19.)

The matter was submitted on July 29, 2004.

FACTUAL FINDINGS

1. Steven K. Hartzell, Executive Director of the board, filed the Accusation in his official capacity.

2. The board issued Physical Therapist's License number PT 16584 to respondent on April 5, 1990.

3. Beginning in June 1996, respondent, doing business as American Rehab. Services, annually entered into "Independent Contractor Agreements" with Affiliated Home Health

Services, Inc. (AHHS), to provide physical therapy services to the patients of AHHS. AHHS is a Medicare-certified agency that provides in-home nursing, physical therapy, occupational therapy and other health care services to individual patients in their homes. Patients of AHHS receive services pursuant to individual treatment plans developed by the care providers to whom the patients are referred, in cooperation with each patient's personal physician. When the referral is for physical therapy, AHHS calls respondent or another physical therapist with whom it has an agreement. Services are then rendered according to a schedule devised by the therapist in consultation with the physician, based upon the needs of the patient. The therapist is paid by AHHS for services rendered, which include the maintenance of records on each patient. By contract, respondent was required to maintain progress notes, schedules of visits and periodic evaluations, and to deliver to AHHS "completed clinical notes" for each patient, at least twice weekly, and a schedule of patient visits, weekly. Without progress notes submitted by the therapist, AHHS could not submit its invoice for payment by the patient's insurance company or Medicare.

4. On June 1, 2001, AHHS filed a complaint with the board that respondent had failed to submit clinical notes regarding 22 patients, despite repeated telephone calls and reminders. The board investigated the complaint and interviewed respondent, who admitted that "due to personal and mental problems" he was "not able" to submit the required notes, but assured the investigator that his problems, which were marital, were "ironed out," and that the deficient practices would not be repeated.

5. AHHS terminated respondent's services. On March 13, 2001, respondent entered into a similar contract with Home Health Integrated Services, Inc. (HHIS), another home health services organization. HHIS, by contract, required respondent to submit progress notes to HHIS on a weekly basis.

6. As early as September 19, 2001, and again on July 17, 2002, HHIS wrote to respondent regarding his alleged failure to submit patient notes, and his failure to return calls regarding the problem. Following numerous unanswered telephone calls to respondent, the HHIS administrator wrote a letter to respondent on February 25, 2003, regarding seven patients who had been referred to respondent by the agency, but concerning whom respondent had failed to submit any progress notes. On March 17, 2003, an attorney for HHIS wrote to respondent demanding the progress reports within five days. On the same date, HHIS terminated respondent's services.

7. On February 27, 2003, HHIS submitted a complaint to the board that respondent had failed to submit any patient progress notes to HHIS since January 12, 2003, despite both telephonic and written attempts to reach respondent. The board investigator interviewed respondent again on August 13, 2003. Respondent admitted that he had failed to submit progress notes to HHIS in a timely fashion "due to the excessive number of patients," and continuing "mental problems as well as financial problems."

8. At hearing, complainant established that respondent had failed to submit progress notes and/or failed to otherwise document his evaluation of patients in the following particulars:

Home Health Agency	Patient Name	Dates of Service
AHHS	F.F.	Unclear ¹
HHIS	C.B.	January 12, 2003 January 14, 2003 January 16, 2003 January 19, 2003 January 26, 2003 January 28, 2003 January 30, 2003
HHIS	R.D.	January 18, 2003 January 22, 2003 January 24, 2003 January 28, 2003 January 30, 2003
HHIS	M.N.	January 16, 2003 February 2, 2003
HHIS	E.W.	January 17, 2003

9. Respondent submitted “Weekly Activity Record” forms to HHIS regarding several patients that were incomplete, or in one case, included a patient’s signature that was in respondent’s handwriting.

10. No evidence was presented that there were quality of care issues with respect to the home visits made by respondent for AHHS or HHIS. However, the lack of progress notes concerning particular patients did affect the replacement therapists’ ability to provide a seamless transition in services, and may have extended the patients’ courses of treatment.

11. Both home health agencies were exposed to potential loss of income due to respondent’s failure to turn in progress notes in a timely fashion. HHIS estimated its loss as \$15,000, and AHHS lost \$1,904.²

¹ HHIS administrator Luis Onrubia was unprepared to provide with any precision the dates of visits to patient F.F. that were not followed by the submission of progress notes by respondent. He testified, from records, that there were two such occasions between February 2002, and April 2002, although those dates do not correspond to other evidence regarding the time during which respondent worked for HHIS. (Exhibit 11, page 2, and the Accusation in this matter, refer to the 2002 time period during which respondent treated F.F., although other evidence, including page 3 of Exhibit 1, indicates that respondent’s relationship with HHIS ended in 2001.) Whatever the year involved, in his testimony respondent confirmed that he failed to submit reports as required by his contract in the case of patient F.F.

² Although AHHS prepared an accounting summary of monies lost due to the failure of respondent to deliver progress notes that amounted to \$46,671, the proof at hearing substantiated only \$1,904 of that amount.

12. Following the termination of the contractual relationship with HHIS, respondent found employment with Glendale Adventist Medical Center as a physical therapist. Although the employer has its own clinic where physical therapy services are offered, respondent works as a home health care provider. He testified that he loves his work, and is supervised closely. His employer requires him to report to the clinic every morning before leaving on his daily assignments in order complete and turn in his progress notes from the previous day's activities. Respondent expressed an understanding that his actions, or inactions, in 2001 and into 2003, caused problems for the agencies that referred patients to him, and that the maintenance of records is important to the patients as well. He reiterated that personal and financial problems were the core reasons for his behavior, in addition to his having taken on more work than he could handle during the periods of time in question. Respondent testified that he did not return many calls, or keep appointments to go into the agency offices, out of fear. Exactly what respondent feared is not entirely clear, except that at least one of the agencies threatened, and eventually instituted, legal action.

13. Neither AHHS nor HHIS paid respondent for services rendered to patients concerning whose treatment respondent failed to document.

14. Although the Accusation in this matter pleaded a right to the costs of investigation and prosecution pursuant to Business and Professions Code section 2661.5, subdivision (a), no evidence on the subject was offered at the hearing.

LEGAL CONCLUSIONS

1. Quite apart from the requirements of record-keeping imposed on respondent contractually, physical therapists are required by Business and Professions Code section 2620.7 to (a) document his evaluation, goals, treatment plan and summary in the patient record, and (b) document the care actually provided to a patient in the patient record. Section 1399.85 of the California Code of Regulations states, "A physical therapist shall document in the patient record the following: ... (6) Each treatment provided." Respondent failed to comply with these sections as set forth in Factual Finding 8, and cause exists to discipline his license pursuant to Business and Professions Code section 2609, based on Factual Findings 3 through 11.

2. Respondent's failures to provide progress notes for patients he treated in the 2001 to 2003 time period, and his inexplicable lack of responses to the inquiries of the contracting agencies, represent significant omissions and call into question respondent's ability to practice safely. Moreover, once contacted by the board, in 2002, respondent gave assurances "that this will not happen again," only to break that promise in 2003.

In mitigation, no evidence has been adduced that in 14 years of practice respondent has ever harmed a patient, or that his technical skills are lacking in any way. Of equal importance is the fact that he is now an employee of a health care provider, rather than an independent contractor operating his own clinic or business. Glendale Adventist Medical Center is supplying oversight and monitoring services that are deemed critical to

respondent's ability to continue to practice his profession responsibly and safely. Should respondent suffer another lapse in the performance of his reporting obligations, the consequences will undoubtedly include a loss of employment. The within order, which prohibits respondent from maintaining an independent practice, is intended to make such oversight a continuing requirement in order to safeguard the health and rights of respondent's patients.

ORDER

Physical Therapy License Number PT 16584, issued to respondent Don Fadri Ferrolino, is hereby revoked. Said revocation is stayed for a period of five (5) years, and the board shall issue a probationary license subject to the following terms and conditions:

1. Respondent shall obey all federal, state and local laws, and statutes and regulations governing the practice of physical therapy in California.
2. Respondent shall comply with the board's probation monitoring program, and shall appear in person for interviews with the board, or its designee, upon request at various intervals and with reasonable notice.
3. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the board, stating whether there has been compliance with all conditions of probation.
4. Respondent shall notify all present and future employers of the reason for and the terms and conditions of the probation by providing a copy of the Accusation and the Decision and Order to the employer. Respondent shall obtain written confirmation from the employer that the documents were received. If the respondent changes, or obtains additional employment, he shall provide the above notification to the employer and submit written employer confirmation to the board within 10 days. The notification(s) shall include the name, address and phone number of the employer, and, if different, the name, address and phone number of the work location.
5. Respondent shall notify the board, in writing, of any and all changes of name or address within 10 days.
6. Respondent shall be prohibited from engaging in the solo practice of physical therapy. He may practice or perform physical therapy only in a supervised, structured environment. Respondent shall not work for a temporary services agency or registry without the express, written permission of the board.
7. Respondent may not use aliases and shall be prohibited from using any name which is not his legally-recognized name or based upon a legal name change.

8. If respondent works less than 192 hours in a period of three months, those months shall not be counted toward satisfaction of the probationary period. The respondent shall notify the board if he works less than 192 hours in a three month period.

9. The period of probation shall run only during the time respondent is practicing within the jurisdiction of California. If, during probation, respondent does not practice within California, he is required to immediately notify the probation monitor in writing of the date that his practice is out of state, and the date of return, if any. Practice by respondent in California prior to notification to the board of his return will not be credited toward completion of probation. Any order for payment of costs recovery shall remain in effect whether or not probation is tolled.

10. If respondent violates probation in any respect, the board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation is filed against respondent during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

11. Following the effective date of this probation, if respondent ceases practicing as a physical therapist due to retirement, health or other reasons respondent may request to surrender his license to the board. The board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, the terms and conditions of probation shall be tolled until such time as the license is no longer renewable, the respondent makes application for the renewal of the tendered license or makes application for a new license.

12. Within 90 days of the effective date of this decision, respondent shall take and pass the board's written examination on the laws and regulations governing the practice of physical therapy in California. If respondent fails to pass the examination, he shall be suspended from the practice of physical therapy until a repeat examination has been successfully passed.

13. Respondent may not be the sole proprietor or partner in the ownership of any business that offers physical therapy services. He may not be an officer of any corporation that offers or provides physical therapy services. He may not employ physical therapists, physical therapist assistants or physical therapy aides.

14. Respondent shall not have final approval over any billings submitted to any third-party payors in any employment as a physical therapist.

15. Within 30 days of the effective date of this decision, respondent shall submit to the board, or its designee, for prior approval a physical therapy remedial educational program, including a course in record-keeping and any courses which may be designated by the board, which shall be not less than 20 hours. Following completion of each course, the

board or its designee may administer an examination to test respondent's competency or otherwise demonstrates competency of the subject.

16. Upon successful completion of probation, respondent's license shall be fully restored.

DATED: August 10, 2004

Original Signed By:
TIMOTHY S. THOMAS
Administrative Law Judge
Office of Administrative Hearings